trying to cross a railroad track in front of an approaching train which he actually saw, the rule appears to be different. *Chicago Railway Co. v. Chancellor*, 165 Ill. 438, holds that in such case, unless a person stops to look and listen immediately before stepping on the track, he is guilty of contributory negligence.

SALES—BREACH OF WARRANTY—REMEDIES OF BUYER.—WHITE v. MILLER, 109 N. W. (IOWA) 465.—Plaintiff purchased a cow with a calf "by her side," the sale being under a warranty to the effect that a cow with calf should be regarded as one animal, that the cow was a breeder and that, if the cow failed to fulfill the warranty, the "animal" might be returned and the price would be refunded. The cow not fulfilling the warranty, the plaintiff tendered her to the seller and then sued. *Held*, that the contract had fixed a remedy in case of breach of warranty and the plaintiff, not having tendered the calf could not recover. McClain & Ladd, JJ., *dissenting*.

When the parties have not stipulated as to the course to be taken on breach of warranty, the vendee has his election either to sue on the warranty or to rescind the contract by returning the property and suing for the purchase price. *McCormick & Bro. v. Dunville*, 36 Iowa 645. It is competent, however, for the parties to provide by conract that on failure of warranty, a particular course shall be pursued. *King v. Towsley*, 64 Iowa 75. If it is agreed that the thing purchased shall be returned before liability accrues, the purchaser, before he can recover damages must show a return, an offer to return, or a waiver by the vendor of such requirement. *David v. Gosser*, 41 Kan. 414. There are, however, minority *dicta* to the effect that, where a thing is sold under a warranty providing that the purchaser may return it, if the warranty fails after a specified time, the right of return is optional with the vendee and a right of action exists for a breach of warranty. *Moore v. Emerson*, 63 Mo. App. 137; *Saar, Scott & Co. v. Patterson*, 65 Minn. 449.

SALES—CONTRACT FOR SALE AND DELIVERY OF COAL—WHAT CONSTITUTES EXCUSE FOR FAILURE TO MAKE DELIVERIES.—SAMUEL H. COTTRELL & SON v. SMOKELESS FUEL CO., 129 FED. 174 (VA.). *Held*, that a contract for sale and delivery of coal from a certain mine at specified prices which was subject to a provision that deliveries should be subject to strikes, which might delay or prevent shipment, would not excuse seller from performance, because of a strike which merely increases cost of production and cost to the seller.

Nothing will excuse the performance of an express contract which is neither unlawful nor impossible but the act of God, the law, or the other party to a contract. *Stees v. Leonard*, 20 Minn. 494. Thus, where a duty is created by a party's agreement, the party will not be excused from performance, though he is disabled without his own fault. *Mill Dam Foundry v. Harvey*, 38 Mass. 417 and in *D. L. and W. R. R. v. Bowns*, 36 N. Y. Super. Ct. 126, the seller was held liable for non-performance of a contract to furnish coal, which contained a provision that seller should be exempt from performance in case of a strike, it being shown that strike resulted from reduction in wage by seller, so *Budgett v. Binnington* 1 S. B. 35 holds that a dock strike affecting the labor engaged both by the shipowner and the charterer does not relieve the charterer from promise to have cargo unloaded at a specified time. A duty or charge made upon a party by his own contract is enforceable against him, notwithstanding any accident or necessity since he might have provided against same in contract. *Clark on Contracts*, sec. 250.